



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/157417

PRELIMINARY RECITALS

Pursuant to a petition filed May 06, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on May 29, 2014, at Kenosha, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely and if so, whether the Kenosha County Human Service Department (the agency) correctly denied Petitioner's request to backdate her child care authorizations to June 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Coordinator
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On April 23, 2013, the Petitioner completed an application for FoodShare and Healthcare benefits, only. (Exhibit 3)
3. On August 28, 2013, the Petitioner completed an application for Foodshare and Healthcare benefits, only. (Exhibit 4)
4. On September 9, 2013, the Petitioner applied for child care benefits over the phone. (Exhibit 7)
5. On October 4, 2013, the agency sent the Petitioner a notice indicating that she was eligible for child care benefits, effective September 1, 2013. Page two of the notice indicated that obtaining child care assistance is a two-step process; the first step is establishing eligibility and the second step is obtaining authorization to pay the chosen child care provider. (Exhibit 6)
6. On November 7, 2013 and again on November 20, 2013, the agency sent the Petitioner similar notices advising her of her eligibility and the need to request authorizations. (Exhibits 8 and 9)
7. Petitioner contacted the agency to request child care authorizations on February 11, 2014. At that time, she was told her authorization would only be granted from the first of the month. (Exhibit 7)
8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 6, 2014. (Exhibit 1)

DISCUSSION

With regard to the timeliness of Petitioner's appeal, there is nothing in the record showing that the agency sent the Petitioner a written notice advising her that her request for authorizations between September 2013 and February 2014 was denied. "Each client has the right to adequate and timely notice of adverse action," and to be advised of his/her hearing rights and the hearing procedures. *Income Maintenance Manual §3.2.1* Because Petitioner was not provided with a negative notice, advising her of her appeal rights, her appeal is found to be timely.

With regard to the merits of the Petitioner's appeal, it is found that the agency acted correctly.

In her request for fair hearing, the Petitioner requested child care benefits be backdated to June 4, 2013. However, the Petitioner did not apply for child care benefits until September 9, 2013 and eligibility may only be backdated to the first of the month of the application filing date. *Wisconsin Share Child Care Manual (CCM) §1.3.6* As such, Petitioner could not have her benefits backdated to June 4, 2013.

Further, the Child Care Policy Manual does not allow for backdating Petitioner's authorizations to June 4, 2013.

"At initial eligibility, an authorization may be backdated only to the first of the month of the current eligibility period, or to the Sunday that is six days prior to the first of the eligibility month." *CCM §3.6.24* However, "if a family that has been determined eligible for child care assistance does not request an authorization for child care reimbursement until several months

after initial eligibility has been determined, the authorization may be backdated only to the first of the month of the request for authorization.” *Id.*

In the case at hand, the Petitioner did not request an authorization until February 2014, four months after she was notified of her eligibility. Under such circumstances, her authorization could only be backdated to February 1, 2014.

Petitioner argued that it is not fair to deny her request to backdate her child care benefits because, she was not told she needed to request authorizations as a second step in securing payment for child care. First, Petitioner’s argument is equitable in nature, meaning it is based upon what a party thinks is or is not fair. However, administrative law judges do not have the authority make decisions based upon equity, and may only make decisions based upon the law as it is written. Second, Petitioner received three notices in two months that advised her of the two-step process and that she needed to request authorizations for childcare. As such, Petitioner was given notice of what she needed to do to secure payment for child care.

CONCLUSIONS OF LAW

1. Petitioner’s appeal is timely.
2. The agency correctly denied Petitioner’s request to backdate her authorizations/eligibility to June 2013.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of
Milwaukee, Wisconsin, this 11th day of
August, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 11, 2014.

Kenosha County Human Service Department
Child Care Benefits